ON FILE
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No. 80-242

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

EDWARD HIDALGO,
SECRETARY OF THE NAVY, *Petitioner,*
v.
ALICE NAKSHIAN, *Respondent.*

On Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

MOTION FOR LEAVE TO FILE AS AMICI CURIAE AND BRIEF AMICI CURIAE

FOR HON. CLAUDE PEPPER, HON. GERALDINE A. FERRARO, HON. TOM LANTOS, HON. BRUCE F. VENTO, HON. THOMAS J. DOWNEY, HON. MARY ROSE OAKAR, HON. RON WYDEN, HON. JOHN L. BURTON, HON. HENRY A. WAXMAN, HON. WILLIAM RATCHFORD, HON. JAMES M. JEFFORDS, HON. BARNEY FRANK, HON. EDWARD R. ROYBAL, MEMBERS OF CONGRESS AS AMICI CURIAE

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IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1980
NO. 80-242

EDWARD HIDALGO,
SECRETARY OF THE NAVY, PETITIONER

v.

ALICE NAKSHIAN

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MOTION OF HON. CLAUDE PEPPER, HON. GERALDINE A. FERRARO, HON. TOM LANTOS, HON. BRUCE F. VENTO, HON. THOMAS J. DOWNEY, HON. MARY ROSE OAKAR, HON. RON WYDEN, HON. JOHN L. BURTON, HON. HENRY A. WAXMAN, HON. WILLIAM R. RATCHFORD, HON. JAMES M. JEFFORDS, HON. BARNEY FRANK, HON. EDWARD R. ROYBAL FOR LEAVE TO FILE BRIEF AMICI CURIAE

MEMBERS OF CONGRESS AS AMICI CURIAE

Pursuant to Rule 42(3) of the Rules of this Court, Hon. Claude Pepper, Hon. Geraldine A. Ferraro, Hon. Tom Lantos, Hon. Bruce F. Vento, Hon. Thomas J. Downey, Hon. Mary Rose Oakar, Hon. Ron Wyden, Hon. John L. Burton, Hon. Henry A. Waxman, Hon. William R. Ratchford, Hon. James M. Jeffords, Hon. Barney Frank, Hon. Edward R. Roybal respectfully move the Court for leave to file a brief amici curiae in the above entitled case. Counsel for the appellant has denied movants' request to file brief of amici curiae; the appellee has granted his consent.

INTEREST OF AMICI

Amici are members of Congress with a unique interest in the fairness and efficiency of the Federal Government. Amici are also members of the Select Committee on Aging which has been mandated by the House of Representatives to study and review the problems of older Americans, including the problems of income maintenance and employment.

Representative Claude Pepper, in addition to chairing the Committee on Aging, was the principal sponsor and co-manager for floor consideration of the bill which became the Age Discrimination in Employment Act (ADEA) Amendments of 1978, Pub. L. 95-256, 92 stat. 189.

Amici as members of Congress have day-to-day experience in the process of legislation: discerning problems with legislative solutions, developing legislation to ameliorate such problems, and

obtaining the prerequisite votes to enact the necessary legislation. From this perspective, they can uniquely address the legislative intent underlying the Acts of Congress discussed in appellant's brief. Moreover, amici are singularly placed to address the broader interest of persons affected by age discrimination in general, issues regarding which are raised by the instant appeal.

It is to bring this unique perspective in addressing the issues raised herein that has prompted amici to file this motion seeking leave to file its amici curiae brief.

Amici respectfully request the leave of this Court to file a brief amici curiae presenting their views of the important issues raised herein.

Respectfully Submitted,

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March 10, 1981

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1980
NO. 80-242

EDWARD HIDALGO,
SECRETARY OF THE NAVY, Petitioner

v.

ALICE NAKSHIAN

On Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR HON. CLAUDE PEPPER, HON. GERALDINE A. FERRARO, HON. TOM LANTOS, HON. BRUCE F. VENTO, HON. THOMAS J. DOWNEY, HON. MARY ROSE OAKAR, HON. RON WYDEN, HON. JOHN L. BURTON, HON. HENRY A. WAXMAN, HON. WILLIAM R. RATCHFORD, HON. JAMES M. JEFFORDS, HON. BARNEY FRANK, HON. EDWARD R. ROYBAL

MEMBERS OF CONGRESS AS AMICI CURIAE

PRELIMINARY STATEMENT

In accordance with Rule 42 of the Rules of this Court, this brief amici curiae is filed in support of the position of appellee, pursuant to a timely motion for leave to file such brief.

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I. INTEREST OF THE AMICI CURIAE

The amici curiae consist of Honorable Claude Pepper, Chairman of the Select Committee on Aging of the United States House of Representatives, and other members of that committee. As members of the House Select Committee on Aging, amici are responsible for the "continuing comprehensive study and review of the problems of the older American." House Rule X, cl. 6 (g) (1979). Age discrimination in employment is a pervasive problem and the Committee regards it as essential that the law prohibiting such discrimination, as amended by 1978 legislation the Committee played a key role in developing, be interpreted correctly so as to give effect to congressional intent regarding appropriate enforcement mechanisms.

In the present case, a dispute has arisen over whether Congress intended Fed-

eral employees to have the right to a jury trial in suits brought pursuant to the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. (ADEA). There is nothing in the language of the statute nor in the legislative history that indicates that Congress thought that federal employees should be denied a jury trial. To so interpret the provisions of the ADEA would undermine the intent of Congress to protect all employees covered by the Act against age discrimination in a comparable manner. The House Select Committee on Aging has a continuing oversight role regarding the need for programs to assist older Americans and the effectiveness of existing programs. The ADEA is a basic charter protecting all employees from discrimination based on age. The committee is deeply concerned about interpretations of that Act which have the effect of di-

luting the rights and remedies available to a large segment of persons who may wish to utilize it to vindicate their rights, namely, federal employees.

II. SUMMARY OF ARGUMENT

The guarantee of a right to jury trial to federal employees was intended by Congress when it originally brought these workers under the coverage of this statute. The interpretation of the Congress' intent has been accurately articulated and presented by the U.S. Court of Appeals in Nakshian v. Claytor, 628 F. 2d 59 (D.C. Cir. 1980).

The ADEA, as amended, provides that aggrieved federal employees may bring a civil action "in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes" of the Act. 29 U.S.C. § 633a(c) (1976). The use of such lan-

guage indicates that jury trials were contemplated when the Act was extended to the Federal sector. Identical reasoning led this Court in Lorillard v. Pons, 434 U.S. 575 (1978), to find a right to jury trial for private employees existed under the Act.

To deny federal employees the right to jury trial would subvert the clear intention of Congress to protect federal employees against age discrimination in at least as effective a manner as private employees. Jury trial was recognized as an important procedural protection in the ADEA in general. When court cases made the law uncertain with respect to a private employee's right to jury trial under the ADEA, Congress, in 1978, made such a right explicit in order to clarify its original intent. This Court confirmed that intent in Lorillard prior

to final enactment of the 1978 amendments. It now has the opportunity to reconfirm congressional intent with respect to a class of comparable beneficiaries of the ADEA--federal employees.

III. ARGUMENT

1. Congress Intended to Accord Federal Employees the Right to Jury Trial in Suits Brought Under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq.

A. The Language of the Act Indicates that Jury Trial was Contemplated.

Section 15(c) of the ADEA, 29 U.S.C. § 633a(c) (1976), provides that:

> Any person aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter. (Emphasis supplied.)

This provision is virtually identical to that part of the Act which governs civil actions by non-federal sector employees. Section 7(c), 29 U.S.C.

§ 626(c), provides that aggrieved persons may bring "a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter. . . . " This Court in Lorillard v. Pons, 434 U.S. 575 (1978), held that the use of the term of art "legal . . . relief" in section 7(c) indicates that Congress intended for it to carry its usual meaning, namely, that in cases where legal relief is available and legal rights are determined, the right to jury trial is preserved.

The same reasoning applies to the identical usage of the term in Section 15 (c) of the Act. The fact that the Seventh Amendment has been held to be the source of the right to jury trial in cases involving "legal" relief, Curtis v. Loether, 415 U.S. 189, 195 (1974),

and that, concededly, the Seventh Amendment does not itself guarantee a right to jury trial in suits against the United States, Galloway v. United States, 319 U.S 372 (1943), does not undermine this conclusion. This Court in Lorillard did not decide the constitutional issue of the Seventh Amendment's applicability in ADEA suits. 434 U.S. at 577. It instead noted the use of the phrase "legal relief" and the fact that Congress employed the term against the backdrop of its settled meaning and held that Congress "knew the significance of the term 'legal'" and intended for it to mean that jury trial was available in ADEA suits. 434 U.S. at 583.

The inference from the use of the language "legal relief" in Section 15(c) is even stronger in the case of federal employees. The ADEA provisions for federal sector complaints and lawsuits

were amended in 1978, with conference committee consideration and final enactment occurring after Lorillard was decided. See, Pub. L. No. 95-256, 92 Stat. 189 (1978); H. Rept. No. 95-950, 95th Cong., 2d Sess. (1978). Nevertheless, the provision for "legal relief" for federal employees was retained. Thus, the conclusion is almost irresistible that, having just been informed by the Court that provision for "legal relief" meant jury trial, Congress intended for that term to have its settled meaning when it used it in section 15(c).

This inference is not inconsistent with Congress specifically providing for jury trial for private employees in the 1978 amendments. That provision was first added on the Senate floor before Lorillard was decided. Its sponsor, Senator Kennedy, noted the split in the

circuits regarding the issue and offered the amendment to confirm Congressional intent and clarify the issue. 1/

1/ See, 123 Cong. Rec. 34317-34318 (October 19, 1977) (remarks of Senator Kennedy). Senator Kennedy's explanation for the desirability of the amendment applies to federal employee suits as well as those of private victims of discrimination:

> [J]uries are more likely to be open to the issues which have been raised by the plaintiffs. Sometimes, a judge may be slightly callous, perhaps because he himself, is protected by life tenure, or because he is somewhat removed from the usual employeremployee relationship. The jury may be more neutral in such circumstances.
>
> It does seem to me that when a particular plaintiff in an age discrimination case feels aggrieved, if he desires . . . a jury trial, that it would be important not to deny him that possibility.

Nothing in this legislative history indicates an intention to distinguish federal employee rights from those of private employees by the enactment of the jury trial provision.

The conference committee considered the bill after Lorillard and added a provision for jury trials in actions for liquidated damages, a question left open by the Court. H. Rept, 95-950, at 13-14; 434 U.S. at 577 n. 2. The court below correctly described the significance of this sequence of events:

> Thus, what we see is Congress reiterating its belief in the appropriateness of jury trials in ADEA actions and acting to confirm the right whenever doubt appeared first when there was conflict among the circuits on the jury trial issue, and later to resolve the question left open by Lorillard. The legislative history of the amendment speaks only in terms of confirming the right to jury trials in age discrimination cases. No attempt was made to draw a distinction between public and private employers. That only Section 7(c) was amended is easily explained by the fact that the cases which prompted congressional action were brought against private employers. 628 F. 2d at 65. (Emphasis supplied).

Section 15(c) contains another indication that the right to jury trial was intended to apply in federal sector ADEA suits. Jurisdiction to award legal and equitable relief is vested in any "Federal district court of competent jurisdiction." 29 U.S.C. § 633a(c) (1976). Congress thus chose the district courts to hear federal employee suits for legal relief. It has been held that the vesting of jurisdiction in the district court as opposed to, for instance, the Court of Claims, supports the inference that jury trial is available. Law v. United States, 266 U.S. 494, 496 (1925); United States v. Pfitsch, 256 U.S. 547 (1921); see also, Crouch v. United States, 8 F. 2d 435 (4th Cir. 1925); United States v. McGovern, 299 F. 302 (9th Cir. 1924). Congress obviously

may vest jurisdiction over actions against the United States in the court of its choice. "And the particular grant of jurisdiction will determine the method of trial, court or jury, in the absence of some express provision dealing with the method of trial. Thus, absent a provision as to the method of trial, a grant of jurisdiction to a district court as a court of law carries with it a right of jury trial." 5 J. Moore, Federal Practice, ¶ 38.32[2] at 236; see also 9 Wright and Miller, Federal Practice and Procedure, § 2314.

Thus, the language of the ADEA and the legislative background of the 1978 amendments confirm that federal employees enjoy the right to trial by jury in age discrimination suits against their government employers. The question is one of statutory interpretation and

drawing inferences from the use of language which has a settled meaning. 2/

2/ It is argued that in suits against the government there must be an explicit provision of the right to jury trial. See, Petition for A Writ of Certiorari, at 4; Reply Memorandum for the Petitioner, at 2, and Brief for Petitioner, at 4-5, 15.

However, such an argument, in effect, posits two doctrines of sovereign immunity -- immunity from suit and immunity from jury trial. Clearly, the former requires an explicit waiver. There is no additional requirement of explicitness with respect to the latter. The ADEA specifically abrogates sovereign immunity and permits suits against the government. Whether jury trial is a component of such suits is merely a question of statutory interpretation. See, Franquez v. U.S., 604 F. 2d 1239, 1242 (9th Cir. 1979); cf., Hutto v. Finney, 437 U.S. 678, 695-698 (1978) (Court did not require explicit waiver of State's Eleventh Amendment immunity in upholding the assessment of attorneys' fees against the State of Arkansas pursuant to the Civil Rights Attorneys' Fee Award Act of 1976).

Section 15(c) of the ADEA and the legislative background of the amendments of 1978 make clear that Congress had no intention of depriving federal employees of a significant right accorded all others under the ADEA.

B. The Evolution and Structure of the Act Support a Right to Jury Trial For Federal Employees

The general thrust and development of the ADEA demonstrates that the procedural rights of employees in the private and the federal sectors are to be comparable.

The Act, as passed in 1967, protected against age discrimination only those private employees between forty and sixty-five years old. 29 U.S.C. § 631. The original enforcement provision in 29 U.S.C. § 626 (c), authorized an aggrieved private employee to bring a civil action in any court of competent jurisdiction

for legal or equitable relief. Before beginning such action, the employee had to give notice to the Secretary of Labor of his or her intent to sue within the 180 days after the occurrence of the allegedly discriminatory acts. 29 U.S.C. § 626(d).

The remedial relief provision in 29 U.S.C. § 626(b) borrowed from the procedural and remedial scheme of the Fair Labor Standards Act (FLSA). It states:

> The provisions of this chapter shall be enforced in accordance with the powers, remedies, and procedures provided in section 211(b), 216 (except for subsection (a) thereof), and 217 [of Title 29 of the Fair Labor Standards Act] and subsection (c) of this section . . .

In 1974, Congress amended the ADEA by enacting § 15, 29 U.S.C. § 633a, thus extending the coverage of the Act to employees of the Federal Government. 29 U.S.C. § 633a(b) and (c) are the remedi-

al relief and enforcement provisions governing federal employees. Together they provide that a lawsuit may be commenced in any federal district court after an employee has exhausted his or her administrative remedies by either seeking administrative relief from the Civil Service Commission (CSC) or filing a timely notice of intent to sue with the Commission. Since the enactment of the 1978 Reorganization Plan No 1, the age discrimination responsibilities of the CSC with respect to federal employees have been transferred from it to the Equal Employment Opportunity Commission (EEOC). See Section 2 of the 1978 Reorganization Plan No. 1, 43 Fed. Reg. 19307 (Feb. 13, 1978).

29 U.S.C. § 633a does not refer explicitly to the remedial provisions of the FLSA. Because § 633a does not provide that a different remedial scheme is

to apply to federal employees, it has become accepted generally that the FLSA procedural rights and remedies are also applicable to the federal sector. 3/

3/ Recently, in Harris v. United States Dept. of Treasury, 489 F. Supp. 476, 478 (D.N. Ill. 1980), the court, echoing the Court of Appeals in this case, wrote of the congressional decision to include federal employees within the ADEA:

> In extending coverage to government employees, there is no indication that Congress intended to distinguish between the procedures available to private and public employees. Rather Congress hoped that the expanded coverage would "remove discriminatory barriers against employment of older workers in government jobs at the federal and local government levels as it has and continues to do in private employment." H.R. Rep. No. 93-913, 93d Cong., 2d Sess., reprinted in [1974] U.S. Code Cong. & Admin. News at 2350 (emphasis supplied). Thus, the purpose of the amendment was to

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In 1978, Congress again amended the ADEA and extended the Act's coverage to seventy years of age for a private sector employee and removed entirely any upper-age limit for a federal worker. The amendments also contained several other substantive and procedural changes to the law. See especially § 7(c)(2), 29 U.S.C. § 626(c)(2), and § 15(f), 29 U.S.C. § 633a (f).

29 U.S.C. § 626(c)(2), applying only to actions begun under 29 U.S.C. § 626(c)(1), relates to suits brought by private employees and provides, in pertinent part, that a private employee who brings a civil action against his or her employer (sub-

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"Continued"

provide government workers with protection similar to that available to private employees.

ject to the limitation that this right to sue ends when the Secretary of Labor steps in and commences an action on his or her behalf) is entitled to a jury trial. Section 15(f), 29 U.S.C. § 633a(f), also added in 1978, provides, with respect to the federal sector:

> Any personnel action of any department, or other entity referred to in subsection (a) of this section shall not be subject to, or affected by, any provision of the Act, other than the provisions of section 12(b) [establishing 40 years as the lower age limit beyond which employees would be denied protection under the ADEA] and the provisions of this section.

These provisions must be examined closely because they have been the source of the conflicting interpretations of the rights of federal employees under the Act. Furthermore, they cannot be construed in isolation but must be considered in light

of the pattern of development of the Act as a whole and the congressional purpose in insuring that all workers are afforded comparable protection from age discrimination.

29 U.S.C. § 626(c)(2) expressly provides for a right to jury trial for private employees covered by the Act. In introducing the amendment, Senator Kennedy was responding to a conflict which had developed in the courts concerning the availability of jury trial under the ADEA. 4/ The question of the right of federal employees to jury trials, however, had not been the subject of challenge, and there is no indication that by providing specifically for private employee jury trials Con-

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4/ See, part 1A of the argument, supra pp. 8-9 for a description of the sequence of events surrounding the enactment of this amendment.

gress thereby intended to exclude federal employees from such a right.

Senator Kennedy spoke broadly of the benefits of jury trial and indicated the importance of the right to jury trial to all victims of age discrimination in employment. Jury trials were favored for reasons relating to perceptions of how judges and juries might render different decisions in age cases and not for reasons relating to distinctions between private and federal employees. 5/ The significance of Senator Kennedy's remarks -- and the legislative history of the provision as a whole -- is not the identity of the plaintiffs for whom the amendment was enacted, but the recognition that the amendment was designed to clarify the original intent of the Act.

5/ See, note 1, supra.

The present conflict over federal employees' right to jury trial is prompting a comparable move to amend the Act to clarify original congressional intent. 6/ This Court's affirmance of the decision below will make this second round of clarifying amendments unneccessary.

Section 15(f), 29 U.S.C. § 633a(f), also added in 1978, provides:

> Any personnel action of any department, agency, or other entity referred to in subsection (a) of this section shall not be subject to, or affected by, any provision of this chapter, other than the provisions of section 631(b) of this title and the provisions of this section.

The provision on its face relates to the actions of federal employers, the entities "referred to in subsection (a) of this section ... ." 29 U.S.C. § 633a(a). The language and purpose of §

6/ See, H.R. 935, 97th Cong., 1st Sess. (1981); H.R. 4472, 96th Cong., 1st Sess. (1979).

15(f) make clear that it was intended to establish different substantive rights and obligations of federal employers in some situations. For example, 29 U.S.C. § 623 provides for certain defenses that private employers may assert but which are not available to public employers as a result of § 15(f).

The legislative history also focuses solely on the federal employer. The only statement of legislative intent regarding §15(f) explains that "restrictions and limitations in other parts of the Act, such as [§12(a), 29 U.S.C. § 631(a), which establishes 70 years as the upper age limit beyond which private employees would be denied protection] and [§4(f), 29 U.S.C. § 623(f), which authorizes several defenses available to private employers] do not apply to section 15." H. Rept. No. 95-527, 95th Cong., 1st

Sess. 111 (1977). Thus, § 633a(f) applies only to the government as employer, and in no way reflects an intent on the part of the Congress that federal employees be denied rights accorded other employees under the Act or that the powers of the government or the court, as enforcers of the procedural aspects of the ADEA, should be altered.

A contrary interpretation of § 633a (f) would lead to such illogical results as the following: 1) that federal employees would not be entitled to liquidated damages even if their employer was discriminating against them in a wilful manner (see, 29 U.S.C. § 626(b)); 2) that the district court and the administrative agency responsible for handling complaints would lack the authority to award attorney's fees (see, 29 U.S.C. § 216 (b)); and 3) that while private employees would be required to file

written consents with the court in order to bring a class action ("opt-in"), federal employees would be permitted to bring a FRCP 23 "opt-out" class action (see, 29 U.S.C. § 216(b)). Congress did not intend such differing procedural treatment of federal and private sector employees. Furthermore, to so discriminate between federal and private victims of age discrimination with respect to the availability of liquidated damages and attorneys' fees is not consistent with the congressional intent and policy to provide "increased protection for federal ... employees." H. Rept. No. 95-950, 95th Cong., 2d Sess. 112 (1978) (emphasis supplied).

This interpretation of §15(f) is the logical one and is most consistent with the spirit of the ADEA. It is the construction of the Act which has been

adopted by courts 7/ and the United States Comptroller General, 8/ and has

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7/ See, Harris v. United States Dept. of Treasury, 489 F. Supp. 476 (N.D. Ill. 1980) (federal employees have the right to jury trial).

8/ In the Matter of Equal Employment Opportunity Commission - Administrative Payment of Attorneys Fees, B - 193144 (U.S. Comp. Gen., Sept. 15, 1980). The Comptroller General concluded:

> We find nothing in the 1978 Amendments or their legislative history that indicates that the Congress intended to eliminate the right of a prevailing Federal employee in an ADEA case to receive an award of attorneys fees. In fact, both the 1974 and 1978 Amendments generally broadened the rights of federal employees, and to construe section 633a(f) to eliminate the right to receive attorneys fees runs counter to this widening of their rights. The fact that the general statements in both sections 626(c) and 633a (c) that a court of competent jurisdiction may grant "such legal or equitable relief as will effectuate the purposes" of the ADEA were not revised

"Continued"

been pressed by the United States in other cases. 9/

C. Congressional Statements Confirm the Intention to Accord Federal Sector Employees Aggrieved by Age Discrimination the Right to Trial by Jury.

On September 5, 1979, Congressman Claude Pepper, Chairman of the House Select Committee on Aging, stressed that the right to a jury trial was equally important to federal employees and private sector workers. He indicated that Congress never intended to treat the two categories of employees differently

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by the 1978 Amendments seems to indicate that Congress did not intend to significantly lessen the remedies available to Federal employees by eliminating their right to an award of attorneys fees. Id. 6-7.

9/ See, Moysey v. Andrus, 481 F. Supp. 850, 853 (D.D.C. 1979).

with respect to this right. Drawing from the legislative history, he stated:

> Since the unamended language of section 7c(1), dealing with civil actions generally for aggrieved employees, and the language of section 15c, providing a civil action for Federal employees, are virtually the same, and the Kennedy amendment was enacted to clarify the intention of Congress to authorize a jury trial under that language, it would be reasonable to suppose that the spillover from section 7c would be in the direction of assuring a jury trial under section 15c. Despite appellate decisions that hold a jury trial is authorized, and a legislative history that says the jury trial language added to section 7c is intended to clarify an already existing right, there are still those who contend that the act does not authorize a jury trial on the grievances of Federal employees.
>
> There is nothing in the House or Senate debates that indicates there was any thought that Federal employees should be denied a jury trial. 125 Cong. Rec. E 4258 (daily ed. Sept. 5, 1979) (Emphasis supplied).

Congressman Pepper also quoted from Congressman Quie's statement at the time of the 1978 amendment when the latter emphasized that the purpose of the jury trial amendment was to clarify the Supreme Court's decision in Lorillard v. Pons which left open the question of jury trial in suits for liquidated damages. In the discussion by Congressman Quie there was no mention of different treatment of federal employees and private sector employees regarding the right to jury trial.

Congressman Pepper further emphasized in his statement:

> Those who participated in the House and Senate debates would be surprised to learn that legislative efforts to confirm the right to a jury trial have been construed as a denial of that right. It would be indefensible to deny Federal employees the right to a jury trial.

> Under any legislative enactment in the field of civil rights, the federal government should be the leader not a grudging participant. At this juncture we do not know whether further legislative action will be needed to dispel any notion that Federal employees are entitled to a jury trial. As chairman of the Committee on Aging, I will continue to watch developments in this area, and will ask for further delineation of the right of federal employees to a jury trial if conflicting judicial interpretations are not resolved in favor of a jury trial.

In the 96th and 97th Congresses respectively, measures have been introduced to clarify Congress' intent to guarantee right to jury trial to federal employees under the ADEA. See, H.R. 4472, 96th Congress; and H.R. 935 in the 97th Congress. In an introductory statement accompanying H.R. 935, Congressman Weiss stated: "While it was never our intent to exclude Government workers in the 1978 amendments, Federal defendants

have argued that Congress withheld this right." 127 Cong. Rec. E81 (daily ed. Jan. 19, 1981) (emphasis supplied). Congressman Weiss stressed that any ambiguity that may exist can be traced to the drafting of the Act and not to congressional intent.

IV. CONCLUSION

The right to jury trial is an important part of the package of rights accorded victims of age discrimination under the Age Discrimination in Employment Act. That Congress intended federal, as well as all other, employees to enjoy this right is not only clear from the language of the enforcement provision governing federal ADEA suits, but is consonant with the evolution of the Act as a comprehensive statutory scheme to combat age discrimination whereever it occurs. The courts, the executive

branch, and the Comptroller General have so interpreted the Act. Therefore, for the reasons set forth above, the judgment below granting federal employees a right to jury trial in ADEA suits against their employers should be affirmed.

Respectfully Submitted,

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